

## **REMARKS**

### **Claim Summary**

Claims 66-77 are pending. Claims 1-65 were previously cancelled. No claim amendments are being made at this time.

### **Double Patenting Rejections**

Claim 71 stands rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claim 5 of U.S. Patent No. 6,797,001. The Examiner states that one of ordinary skill in the art would know that mechanisms other than anchors could be used to fix the device in place. Claim 71, however, does not recite that a fixation member even be used to fix the device in place. In fact, claim 71 does not require that the device be fixed in place. As the device claimed in claim 71 recites unobvious differences than those required in claim 5 of the '001 patent, Applicants request the rejection be withdrawn.

### **Claim Rejections under 35 U.S.C. § 103**

Claims 66-76 stand rejected under 35 U.S.C. § 103 as being allegedly unpatentable over Colvin et al. (6,602,289).

Independent claim 66 recites a device that effects the condition of a mitral valve annulus of a heart. The device includes an elongated member dimensioned to be placed in the coronary sinus of the heart adjacent the mitral valve annulus, the elongated member having a relatively low resistance to flexure in a first direction and a relatively high resistance to flexure in a second direction, wherein the first and second directions lie in the same plane.

Claim 66 requires that the device be dimensioned to be placed in the coronary sinus of the heart adjacent the mitral valve annulus. Colvin describes an annuloplasty ring which is specifically "shaped and sized for attachment to the inner surface of a heart valve annulus. More precisely, the present invention is shaped to compliment the valve annulus since it [is] matches the general ovoid shape of the native heart annulus." (Col. 5, line 65 – Col. 6, line 1; also see Abstract lines 1-2). The device as described and shown in Colvin is dimensioned for attachment to the inner surface of a heart valve annulus, and is not dimensioned to be placed in the coronary sinus of the heart. The coronary sinus and the mitral valve annulus have anatomically different shapes and the annuloplasty rings described in Colvin are not dimensioned to be placed in the

coronary sinus. Specifically, Colvin states that “[w]hen implanted, the annuloplasty device is shaped similar to a broad ‘U’.” (Col. 5, lines 15-16). A device with a broad “U” shape as shown in Colvin is not adapted to be placed in a coronary sinus.

Colvin does not disclose each limitation of independent claim 66. It would not have been obvious to modify the teachings of Colvin to arrive at claim 1 because Colvin teaches a fundamentally different device which is adapted to be disposed in a different part of the heart. Claims 67-70 depend from independent claim 66 and are not obvious over Colvin for at least the same reasons set forth above. In addition, the Examiner has not shown why claims 67-70 are obvious over Colvin. For example, claim 69 recites that the elongated member is bent to conform to the shape of the coronary sinus when in a first orientation. Claim 70 depends from claim 69 and further requires that the elongated member has a first radius of curvature when in the first orientation, a second radius of curvature when in a second orientation, and wherein the first radius of curvature is less than the second radius of curvature.

Independent claim 71 recites a device that effects the condition of a mitral valve annulus of a heart. The device includes an elongated member dimensioned to be placed in the coronary sinus of the heart adjacent the mitral valve annulus, the elongated member having a relatively low resistance to flexure in a first direction and a relatively high resistance to flexure in a second direction, wherein the elongated member includes a first longitudinal side facing the first direction and a first plurality of notches formed in the first longitudinal side to provide the elongated member with the relatively low resistance to flexure in the first direction, and wherein the elongated member includes a second longitudinal side facing the second direction and a second plurality of notches formed in the second longitudinal side to render the elongated member stable when flexed in the second direction.

Claim 71 requires the device include an elongated member dimensioned to be placed in the coronary sinus of the heart adjacent the mitral valve annulus. This limitation is present in independent claim 66 discussed above, and the same arguments apply to independent claim 71. Colvin does not disclose each limitation in independent claim 71 and it would not be obvious to modify Colvin to arrive at claim 71. Colvin teaches a fundamentally different device which is adapted to be disposed in a different part of the heart. Claims 72-76 depend from claim 71 and are not obvious over Colvin for at least the reasons set forth above. Additionally, the Examiner

has not shown why claims 72-76 are obvious over Colvin. For example, claim 76 requires that the elongated member is bent to conform to the shape of the coronary sinus when in a first orientation.

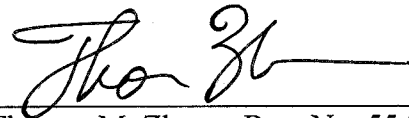
**CONCLUSION**

Applicants request reconsideration and allowance of all claims pending in this application. If a telephone conference would expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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By:



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